

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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SHAW FAMILY ARCHIVES, LTD., EDITH :
MARCUS and META STEVENS, :
:
Plaintiffs, : Case No. 05 Civ. 3939 (CM)
:
-against- : Hon. Colleen McMahon
:
CMG WORLDWIDE, INC. and MARILYN :
MONROE LLC, :
:
Defendants. :
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DECLARATION OF JONATHAN NEIL STRAUSS

JONATHAN NEIL STRAUSS, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am associated with the firm Loeb & Loeb LLP, attorneys for defendant Marilyn Monroe LLC ("MMLLC") in this matter. I am admitted to practice before this Court and respectfully submit this declaration in support of Defendants / Consolidated Plaintiffs' cross-motion for summary judgment on their public domain claim, and in opposition to Plaintiffs / Consolidated Defendants' motion for summary judgment dismissing the public domain claim.

2. Attached hereto as Exhibit 1 is a true and correct copy of a book titled *Marilyn Monroe as the Girl* published by Ballantine Books, Inc. ("Ballantine Book"). The copyright notice states "copyright, 1955 by Sam Shaw."

3. Attached hereto as Exhibit 2 is a true and correct copy of an Application for Registration of a Copyright to the Ballantine Book filed by Sam Shaw.

4. Attached hereto as Exhibit 3 is a true and correct copy of an Opinion and Order dated March 23, 1999 entered in the case *Shaw v. Rizzoli Int'l Pubs., Inc.*, No. 96 Civ. 4259 (JGK), 1999 U.S. Dist. LEXIS 3233 (S.D.N.Y. March 23, 1999).

5. Attached hereto as Exhibit 4 is a true and correct copy of Defendants' Statement of Plaintiffs' Claims to be Dismissed filed in the case *Shaw v. Rizzoli Int'l Pubs., Inc.*, No. 96 Civ. 4259 (JGK), 1999 WL 160084 (S.D.N.Y. March 23, 1999). That document was cited in footnote 6 of the Court's March 23, 1999 Opinion and Order.

6. Attached hereto as Exhibit 5 is a true and correct copy of excerpts of a book titled *Marilyn Monroe. The Life. The Myth.* published by Rizzoli International Publications, Inc.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Amended Complaint dated May 10, 1993 filed in the case *Sam Shaw v. St. Martin's Press, Inc., et al.*, No. 93 Civ. 2871, in the Southern District of New York.

8. Attached hereto as Exhibit 7 is a true and correct copy of the Rizzoli Defendants' Local Rule 56.1 Statement, which contains excerpts of the deposition of Sam Shaw in connection with the case *Sam Shaw v. St. Martin's Press, Inc., et al.*, No. 93 Civ. 2871 (S.D.N.Y.).

9. Attached hereto as Exhibit 8 is a true and correct copy of a webpage maintained by the Library of Congress displaying a photograph of Marilyn Monroe from the Flying Skirt Series and indicating that the photograph was published in the New York World-Telegram and the Sun Newspaper in 1955.

10. Attached hereto as Exhibit 9 is a true and correct copy of an article titled “Marilyn’s new life” published in Look magazine on October 1, 1957, containing several photographs of Marilyn Monroe by Sam Shaw.

11. Attached hereto as Exhibit 10 is a true and correct copy of the Complaint dated September 14, 1994 filed in the case *Sam Shaw v. Martin Bressler, Larry Shaw, Susan Shaw, Bressler & Bressler, Valerie Goodman, 1912 Productions, Inc., Marc Weinstein individually and d/b/a Color Group*, Index No. 123783/94 (N.Y. Cty. Sup. Ct. N.Y.).

12. Attached hereto as Exhibit 11 is a true and correct copy of a letter dated July 28, 2005 from David M. Marcus to the New York Post.

13. Attached hereto as Exhibit 12 is a true and correct copy of Defendants’ Third Set of Document Requests dated October 30, 2007.

14. Attached hereto as Exhibit 13 is a true and correct copy of Plaintiffs / Consolidated Defendants’ Responses and Objections to Defendants Third Set of Document Requests dated November 29, 2007.

15. Attached hereto as Exhibit 14 is a true and correct copy of an individual deposition notice MMLLC served on Edith Marcus.

16. Attached hereto as Exhibit 15 is a true and correct copy of excerpts from the deposition of the Shaw Family Archives Ltd.’s 30(b)(6) witness, Melissa Stevens.

17. Attached hereto as Exhibit 16 is a true and correct copy of the transcript of the December 26, 2007 discovery hearing held before Magistrate Judge Fox in this action.

18. On January 4, 2008, Magistrate Judge Fox ruled that he would not compel physical production of the binder referenced during the December 16, 2007 hearing because discovery had closed, but stated that MMLLC could either ask the Court to reopen discovery for the limited purpose of production of the binder, or issue a trial subpoena for the binder.

19. Attached hereto as Exhibit 17 is a true and correct copy of excerpts of a book titled *Marilyn Among Friends*.

20. Attached hereto as Exhibit 18 is a true and correct copy of Defendants August 27, 2007 Response to Plaintiffs' Second Set of Document Requests.

21. Attached hereto as Exhibit 19 is a true and correct copy of an email dated November 9, 2005 from Ken Powell of MSNBC to Larry Shaw, attaching a November 8, 2005 email from Larry Shaw to Ken Powell.

22. Attached hereto as Exhibit 20 is a true and correct copy of a January 30, 2006 letter from Larry Shaw to Kenneth Powell of MSNBC attaching, among other things, portions of the Ballantine Book.

23. Attached hereto as Exhibit 21 is a true and correct copy of a September 18, 2007 letter from Michelle Minieri of Bradford Licensing Associates to Image Source International.

24. Attached hereto as Exhibit 22 is a true and correct copy of a collection of "Notices of Claimed Infringements" from Larry Shaw to Ebay, Inc.

25. Attached hereto as Exhibit 23 is a true and correct copy of a License Agreement between Shaw Family Archives Limited and Scandecor Marketing AB.

26. Attached hereto as Exhibit 24 is a true and correct copy of a letter dated September 27, 2003 from Larry Shaw of Shaw Family Archives to Bonnie Bogin of 20th Century Fox, Legal Department.

27. Attached hereto as Exhibit 25 is a true and correct copy of a photograph printed from the Shaw Family Archives website, <http://www.spc-promotions.com/>, Marilyn Monroe A, photo 3 of 23.

28. Attached hereto as Exhibit 26 is a true and correct copy of a photograph printed from the Shaw Family Archives website, <http://www.spc-promotions.com/>, Marilyn Monroe A, photo 9 of 23.

29. Attached hereto as Exhibit 27 is a true and correct copy of a photograph printed from the Shaw Family Archives website, <http://www.spc-promotions.com/>, Marilyn Monroe B, photo 1 of 9.

30. Attached hereto as Exhibit 28 is a true and correct copy of a photograph printed from the Shaw Family Archives website, <http://www.spc-promotions.com/>, Marilyn Monroe B, photo 3 of 9.

31. Attached hereto as Exhibit 29 is a true and correct copy of a series of photographs printed from the Shaw Family Archives website, <http://www.spc-promotions.com/>, Marilyn Monroe D.

32. Attached hereto as Exhibit 30 is a true and correct copy of a photograph printed from the website <http://www.samshaw.com/mmimages/12.html>.

33. Attached hereto as Exhibit 31 is a true and correct copy of a photograph printed from the website <http://www.samshaw.com/mmimages/14.html>.

34. Attached hereto as Exhibit 32 is a true and correct copy of a Copyright Registration Certificate identified as TX2-400-879 dated September 6, 1988 to Norman Rosten as the claimant of a copyright of the “entire text” of *Marilyn Among Friends*.

35. Attached hereto as Exhibit 33 is a true and correct copy of an Assignment of Copyright in Registration No. TX2-400-879 from Patricia Rosten to Sam Shaw dated November 1997.

36. Attached hereto as Exhibit 34 is a true and correct copy of excerpts of a book titled *The Joy of Marilyn: In the Camera Eye*.

37. Attached hereto as exhibit 35 is a true and correct copy of a letter dated July 14, 2001 from David Marcus to the Register of Copyrights, attaching a copy of the book *The Joy of Marilyn: In the Camera Eye*, a Copyright Registration Form TX, and a check made payable to the Register of Copyrights.

38. Attached hereto as exhibit 36 is true and correct copy of a copyright registration certificate dated July 20, 2001 for *Marilyn Monroe in the Camera Eye* (a/k/a *The Joy of Marilyn: In the Camera Eye*) identified as TX5-342-425.

39. Attached hereto as Exhibit 37 is a true and correct copy of excerpts of the deposition of Mark Roesler.

40. Attached hereto as Exhibit 38 is a true and correct copy of an April 22, 1998 Indenture of Trust agreement executed by Sam Shaw.

41. Attached hereto as Exhibit 39 is a true and correct copy of a transcript of settlement hearing in the case *Edith Marcus Shaw and Meta Shaw Stevens, as Temporary Administrators of the Estate of Sam Shaw v. Larry Shaw, et al.* Index No. 123783/94 (N.Y. Cty. Sup. Ct.) dated June 5, 2002.

42. Attached hereto as Exhibit 40 is a true and correct copy of a Complaint dated September 15, 1994 filed by Sam Shaw in the case *Sam Shaw v. Martin Bressler, Larry Shaw, Susan Shaw, Bressler & Bressler, Valerie Goodman, 1912 Productions, Inc., Marc Weinstein individually and d/b/a Color Group.*, Index No. 123783/94 (NY. Cty. Sup. Ct.).

43. Attached hereto as Exhibit 41 is a true and correct copy of an Order dated November 23, 2004 entered in an action entitled *Jeffrey P. Tunick v. Larry Shaw, Edith Shaw Marcus, Meta Shaw Stevens, Shaw Family Archives, et al.*, Index No. 116636/03 (N.Y. Cty. Sup. Ct.).

44. Attached hereto as Exhibit 42 is a true and correct copy of a letter dated December 13, 2007 from Gary Adelman, Esq. to Jeong-Ho Lee, Esq. of CMG Worldwide, Inc.

45. Attached hereto as Exhibit 43 is a true and correct copy of a letter dated February 20, 2007 from Michelle Minieri, Senior VP, Managing Director of Bradford Licensing, to Eric Epstein, VP Licensing of Romar International.

46. Attached hereto as Exhibit 44 is a true and correct copy of an email from Daniel Siegel to Wes Zirkle dated March 9, 2004.

47. Attached hereto as Exhibit 45 are true and correct copies of photographs of Marilyn Monroe from the Shaw Family Archives website, <http://www.spc-promotions.com>.

48. Attached hereto as Exhibit 46 is a true and correct copy of Bradford Licensing Associates and Shaw Family Archive Ltd.'s Answer, Affirmative, Defenses, and Counterclaims dated July 5, 2006.

49. Attached hereto as Exhibit 47 is a true and correct copy of Bradford Licensing Associates and Shaw Family Archive Ltd.'s Answer to Third Amended Complaint and Affirmative Defenses, dated August 24, 2007.

50. Attached hereto as Exhibit 48 is a true and correct copy of Senate Bill 771 (2007 Cal. Stat. ch. 439) as signed into law by Governor Arnold Schwarzenegger on October 10, 2007.

51. Attached hereto as Exhibit 49 is a true and correct copy of a January 7, 2008 Order Granting Plaintiff's Motion for Reconsideration in *Milton H. Greene Archives, inc. v. CMG Worldwide, Inc.*, CV 05-02200 MMM (MCx) (C.D. Cal.).

52. Attached hereto as Exhibit 50 is a true and correct copy of a December 5, 2007 email from Jonathan Strauss to Christopher Serbagi.

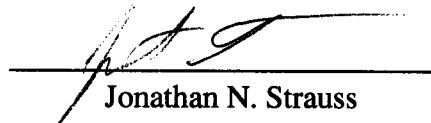
53. Attached hereto as Exhibit 51 is a true and correct copy of excerpts from the deposition of David Strasberg in this action.

54. Attached hereto as Exhibit 52 is a true and correct copy of a Notice of Deposition of Defendant / Consolidated Plaintiff Marilyn Monroe, LLC, dated November 29, 2007.

55. Attached hereto as Exhibit 53 is a true and correct copy of a November 28, 2007 letter from Paula K. Colbath to the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of February, 2008, in New York, New York.


Jonathan N. Strauss